



# UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

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In re Patent Term Extension Application of  
U.S. Patent No. 5,817,028  
Issue Date: October 6, 1998  
U.S. Application No. 08/696987  
PTE Filing Date: December 3, 2010  
For: Method and Device for the Provocation  
Of Air Passage Narrowing and/or the Induction  
of Sputum

: Decision on Petition to  
: Waive EFS Legal Framework Prohibition  
: Regarding Filing Initial Application  
: Under 35 U.S.C. § 156  
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The above-identified application has been forwarded to the Office of Patent Legal Administration in the United States Patent and Trademark Office (the "Office") for consideration of a petition under 37 C.F.R. § 1.182 to waive the prohibition in the legal framework of the Office's Electronic Filing System (EFS), which forbids filing of an initial application for patent term extension under 35 U.S.C. § 156 via EFS.

The petition is granted because the requirements of 37 C.F.R. § 1.740 have now been met and the statutory requirements of 35 U.S.C. § 156(d)(1)(A)-(E) were met upon filing.

## Background and Analysis

On December 3, 2010, Petitioner filed an initial application for patent term extension ("PTE application") pursuant to the provisions of 35 U.S.C. § 156(d)(1) via the Office EFS. Petitioner's EFS acknowledgement receipt indicates that a "PTE Interim Patent Extension Filed."

On June 14, 2011, Petitioner filed a request for status of the application seeking a status inquiry about action on the PTE application.

Following the status inquiry, Petitioner spoke to Office staff several times regarding the provision in the EFS legal framework which prohibits initial filings of applications for patent term extension under 35 U.S.C. 156 via EFS. Office staff directed Petitioner to the Federal Register notice, 74 Fed. Reg. 55202, October 27, 2009, which provides information on this prohibition. The Office directed Petitioner to file a petition to seek waiver of the prohibition and to comply with the additional filings requirements in 37 C.F.R. § 1.740(b).

Petitioner is seeking waiver of the EFS legal framework prohibition and an opportunity to comply with the filing requirements of 37 C.F.R. § 1.740(b).

The Office is treating the present petition under 37 C.F.R. § 1.182, which addresses all situations not specifically provided for in other regulations. Because Petitioner has now complied with 37 C.F.R. 1.740(b) and had timely filed an application for patent term extension which complies with the requirements in 35 U.S.C. § 156(d)(1)(A)-(E), the petition is granted.

**Conclusion**

The petition under 37 C.F.R. § 1.182 is granted.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 37 C.F.R. § 1.17(f). The required petition fees have been received for the present petition.

Telephone inquiries with regard to this communication should be directed to Mary C. Till at (571) 272-7755.



Mary C. Till  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: Office of Regulatory Policy  
Food and Drug Administration  
10903 New Hampshire Ave., Bldg. 51, Rm. 6222  
Silver Spring, MD 20993-0002

RE: ARIDOL (mannitol)  
Docket No.: FDA-

Attention: Beverly Friedman